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2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF WASHINGTON

4 KELLY HARRIS, et al.,
5 Plaintiffs,
6 vs.
7 CROWN MOVING and
8 MAYFLOWER TRANSIT CORP.,
9 Defendants.

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NO. 07-CV-126-JLQ
ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS

10 **BEFORE THE COURT** is Defendants' Motion to Dismiss heard without
11 oral argument on May 15, 2007. Ronald G. Morrison and Regina M. McCrea
12 represent Plaintiffs. John A. Anderson represents Defendants. **It Is Hereby**
13 **Ordered** that Defendants' Motion to Dismiss is **Granted** for the following
14 reasons.

15 **BACKGROUND**

16 Plaintiffs filed this lawsuit on March 30, 2007 in the District Court of the
17 State of Washington for Spokane County alleging only violations of state law. On
18 April 26, 2007, Defendants removed the case to this court and filed a Motion to
19 Dismiss. On May 3, 2007, this court entered an Order to Show Cause why this
20 case should not be remanded to state court. Defendant filed a pleading pointing
21 out that Plaintiff's claims arise under the federal Carmack Amendment, which
22 completely preempts all state law claims, which is good cause why this case
23 should not be remanded.

24 It is Plaintiffs' claim that the Defendants picked up Plaintiffs' household
25 goods for transportation from Washington to Arizona and that before the goods
26 left Washington, they were in an unlocked truck in an unsafe area and a large

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1 portion of Plaintiff's goods were stolen. They allege violation of state law,
2 including the Washington Consumer Protection Act.

3 In *Caterpillar Inc. v. Williams*, 428 U.S. 386, 392, the Supreme Court held
4 that the presence or absence of federal-question jurisdiction is governed by the
5 well-pleaded complaint rule, which provides that federal jurisdiction exists only
6 when a federal question is presented on the face of plaintiff's properly pleaded
7 complaint. Even the existence of a defense based on federal law is insufficient to
8 support federal jurisdiction. *Wayne v. DHL Worldwide Express*, 294 F.3d 1179,
9 1183 (9th Cir. 2002). It was this reasoning which led this court to believe this
10 case should be remanded to state court.

11 However, Defendants pointed out that there is an exception to this rule
12 where a federal defense completely preempts all state law claims in the area of the
13 applicable law.

14 Although we usually defer to plaintiff's choice to plead state law
15 claims, there exist a handful of 'extraordinary situations where even a
16 well-pleaded state law complaint will be deemed to arise under
17 federal law for jurisdictional purposes. *Holman v. Laulo-Rowe*
18 *Agency*, 994 F.2d 666, 668 (9th Cir. 1993). Under the "artful
19 pleading" doctrine, a well-pleaded state law claim presents a federal
20 question when a federal statute has completely preempted that
21 particular area of the law and any claim purportedly based on that
22 preempted state law is considered, from its inception, a federal claim,
23 and therefore arises under federal law and may, therefore, be removed
24 to federal court.

20 *Beneficial Nat'l Bank v. Anderson*, 539 U.S. 1, 8 (2003). The Carmack
21 Amendment is one of very few such preemptive federal laws. The Carmack
22 Amendment provides a "uniform national liability policy for interstate carriers"
23 and is the exclusive cause of action for interstate shipping contract claims alleging
24 loss or damage to property.

25 Congress intended for the Carmack Amendment to provide the
26 exclusive cause of action for loss or damage to goods arriving from
the interstate transportation of those goods by a common carrier.

1 *Hall v. North American Van Lines*, 476 F.3d 684 (9th Cir. 2007).

2 The Carmack Amendment completely preempts “state law claims”
3 seeking to recover damages for charging an improper rate for
4 transporting the goods and the failure to fulfill duties closely related
5 to the duty of delivery. We hold that the Carmack Amendment is
the exclusive cause of action for contract claims alleging delay, loss,
failure to deliver, or damage to property. *Id.*

6 Plaintiffs claim that state law claims regarding theft and damage of goods
7 after being picked up but prior to being shipped are not preempted by the Carmack
8 Amendment and that Washington courts have not yet determined that the Carmack
9 Agreement preempts claims arising under the Washington Consumer Protection
10 Act.

11 However, the Carmack Agreement defines transportation as including:

12 (B) services related to that movement, including arranging for, receipt,
13 delivery, elevation, transfer in transit, refrigeration, icing, ventilation, **storage**,
14 handling, packing, unpacking and interchange of passengers and property. Courts
15 have interpreted this language to include virtually everything related in any way to
16 the move of household goods. *See Marks v. Suddath Relocations Systems, Inc.*,
17 319 F. Supp.2d 746, 750 (S.D. Tex. 2004)(the dispositive fact is that all of their
18 claims are based on allegations that Suddath (the carrier) damaged and/or lost
19 property where transportation and storage was governed by an interstate bill of
20 lading); *Rini v. United Van Lines*, 194 F.3d 402, 406 (1st Cir. 1997) (finding that
21 state law claims that are preempted “include all liability stemming from the
22 damage or loss of goods, liability stemming from the claims process, and liability
23 related to the payment of claims.)

24 Further, courts who have dealt with losses sustained during origin storage,
25 as is the case here, have held that losses sustained during that storage are merely
26 incidental to the transportation of goods and are covered by the Carmack

1 Amendment. *Diamond Transportation Group Inc. V. Emerald Logistics Solutions*
2 *Inc.* , 2006 WL 1789036 (E.D. Pa. 2006); *Rahim Visram v. Darryl Flood*
3 *Warehouse and Moves*, 2006 W,L. 305802 (S.D. Tex. 2006); *Newens v. Orna*
4 *Services, Inc.*, 2002 WL 131734 (N.D. Cal. 2002) (**loss or damage to possessions**
5 **during intrastate transportation and storage of possessions in preparation for**
6 **an interstate move are covered by Carmack.**)

7 Plaintiffs allege that their goods were damaged while stored in a Mayflower
8 Transit truck prior to their shipment to Arizona, which clearly falls within the
9 preemptive scope of the Carmack Amendment and all the Plaintiffs' state law
10 claims must be dismissed. Defendant Crown Moving must also be dismissed as a
11 Defendant.

12 However, Plaintiffs may within Thirty (30) days from the date of this
13 Order, if they so wish, file an Amended Complaint against Mayflower Transit
14 Corp. under the Carmack Amendment for damages they suffered as the result of
15 the loss of their goods. Failure to file an Amended Complaint will result in the
16 entry of a Judgment of Dismissal.

17 **It Is So Ordered. The Clerk is directed enter this Order and forward**
18 **copies to counsel and the Plaintiffs.**

19 **DATED** this 14th day of June, 2007.

20 s/ Justin L. Quackenbush
21 JUSTIN L. QUACKENBUSH
22 SENIOR UNITED STATES DISTRICT JUDGE
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